

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition)
for Early Termination of)
Probation of:)**

**Ramon Fawzi Fakhoury, M.D.)
Physician's and Surgeon's)
Certificate No. A 98772)
Petitioner)**

Case No. 800-2017-037626

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

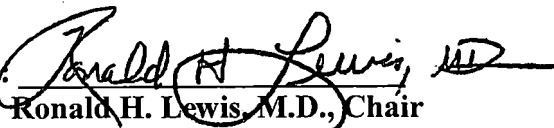
1. First Page, "Case No." is corrected to read "800-2017-037626."

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 15, 2019.

IT IS SO ORDERED January 17, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early
Termination of Probation of:

RAMON FAWZI FAKHOURY, M.D.

Physician's and Surgeon's
Certificate No. A 98772,

Petitioner.

Case No. 09-2011-216645

QAH No. 2018090876

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 29, 2018, in San Diego, California.

Courtney Pilchman, Attorney at Law, represented Ramon Fawzi Fakhoury, M.D., petitioner.

Tessa Heunis, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General, State of California.

The matter was submitted on November 29, 2018.

SUMMARY

Petitioner did not prove by clear and convincing evidence that it is in the interest of public protection to terminate his probation. His petition is denied.

FACTUAL FINDINGS

Background and Disciplinary History

1. On January 31, 2007, the board issued Physician's and Surgeon's Certificate Number A 98772 to petitioner. His license was scheduled to expire on June 30, 2018, unless

renewed, according to the certificate of licensure dated October 9, 2017, admitted as evidence. The evidence of record indicates that petitioner's license was renewed and active.

2. Effective September 15, 2016, the board imposed discipline against petitioner's license in the matter entitled *In the Matter of the Accusation Against Ramon Fawzi Fakhoury, M.D.*, Case No. 09-2011-216645, based on the Stipulated Settlement and Disciplinary Order petitioner signed on March 11, 2016. Pursuant to an interim suspension order dated September 23, 2011, respondent's license was restricted. Under this order petitioner was prohibited from seeing or treating female patients without the presence of a female, registered nurse, chaperone whom the board had approved

The accusation alleged five causes for discipline: sexual abuse, misconduct or relations with four patients, in violation of Business and Professions Code section 726, gross negligence in violation of Section 2234, subdivision (b), repeated negligence acts in violation of Section 2234, subdivision (c), failure to maintain adequate and accurate records in relation to the provision of services in violation of Sections 2234 and 2266, and general unprofessional conduction, in violation of Section 2234. The accusation alleged that respondent performed unwarranted examinations of the patients' genitalia and breasts, failed to record in the patients' medical records that he performed these examinations, and/or his notes were illegible. The conduct occurred in June and July 2011.

Among the terms and conditions of the discipline imposed by the board, petitioner's license was revoked, the revocation was stayed, and his license was placed on probation for 35 months on terms and conditions that required him to have a third party chaperone present while consulting, examining or treating female patients, take and successfully complete a professional boundaries course, a clinician-patient communication course, an ethics course and a medical record keeping course, be available upon request to interview with the board, and other terms and conditions. Petitioner was also required to provide a copy of the Decision and Accusation to any facility where he practiced medicine. He agreed that the charges and allegations if proven at a hearing constituted cause for discipline. Petitioner further agreed that if he petitioned for termination or modification of probation, he will not contest any of the charges and allegations contained in the accusation.

Petitioner has complied with the conditions of probation. His term of probation is scheduled to terminate in August 2019.

The Petition for Penalty Relief

3. On September 29, 2018, petitioner signed a Petition for Penalty Relief. In that petition, he represented that he was not on criminal probation, that he was not charged with any other crimes, that he had not been convicted of any other criminal offenses, that he was not addicted to alcohol or drugs, and that he had not been hospitalized for substance abuse problems or mental illness. Petitioner disclosed that the State of Ohio Medical Board revoked his license to practice medicine based on February 8, 2012, based on the accusation filed against him in California.

Petitioner attached to his petition letters from Rommie Fakhoury, M.D., petitioner's brother, who is licensed to practice medicine in California, and Richard Penney, M.D., petitioner's friend, who practices medicine in North Dakota. Dr. Penney stated he previously practiced medicine in California two years ago.

4. In the narrative statement he submitted in support of his petition, petitioner stated that he "must have my probation lifted so that I can rebuild my career again and focus on my family." He stressed that he did not admit to any of the causes for discipline due to his innocence and the allegations against him were false. He said that the "no admission" term in the stipulation he signed was "unheard of unheard of in similar cases." Petitioner said that he defended himself against the criminal charges from 2011 to 2015 and the jury was unable to reach a verdict.¹ In his statement he challenged the allegations made by each of the female patients identified in the accusation and called into question their credibility and motives.

Petitioner also stressed in his statement that he has complied with the terms of probation.

Petitioner's Background and Testimony

5. Petitioner earned a Doctor of Medicine degree from Ross University in New Jersey in 2003, did an internship and residency in family medicine at Ohio Health in 2004 and 2005 and was Chief Resident there from 2006 to 2007. Since 2009 he has practiced medicine in Norco as attending physician for Baldy View Healthcare and High Desert Medical Office. On June 8, 2016, petitioner filed with the board a Fictitious Name Permit Application to operate a practice as "High Desert Medical." Although the application was submitted into evidence in this matter, no evidence was submitted that the board approved petitioner's Fictitious Name Permit application. The certificate of licensure submitted as evidence dated October 9, 2017, does not state that the board approved the fictitious name permit. According to a probation progress report dated September 6, 2017, petitioner was identified as affiliated as President and Medical Director of "High Desert Medical Office" in Victorville. No "Notification of Decision" for that location was "listed in his file," according to his probation Progress Report dated February 21, 2018.

Petitioner's testimony is summarized as follows: He complied with the terms of his probation and he plans to continue to use a third party chaperone when his probation ends.

¹ Petitioner stated in his statement that the judge, after the jury was unable to reach a verdict, "dismissed" the charges against him. His attorney represented that the judge, on petitioner's motion, dismissed the criminal charges against him "in the interest of justice." The court's decision to dismiss the charges does not mean that petitioner was acquitted or found not guilty of the charges. Also, the burden of proof in a criminal proceeding is not the same as in an administrative proceeding and, moreover, the board may discipline a licensee absent a conviction.

He said he found the courses he took, namely the clinician-patient communication course, the PACE Professional Boundaries course and the records keeping course, helpful:

As evidence of rehabilitation, petitioner cited his volunteer work as a doctor at California Interscholastic Federation (CIF) high school football games. Petitioner estimates he donates about 10 to 25 hours a month of his time. The nature and extent of his volunteer work, however, was unclear. In his petition he stated he served as "CIF football playoff Field Physician" and provided "low cost sport physicals and team physician PRN." He confirmed in his hearing testimony that he was paid at a reduced rate. Thus, it was not clear whether he volunteered or was paid for all or part of the services. Petitioner added that he has served as a "(n)urse practitioner student preceptor." According to a print-out of his continuing education credits, on September 19, 2016, petitioner was awarded 60 professional credits for "Teaching: Teaching nurse practitioner South University." It was therefore also unclear whether his work as a nurse practitioner student preceptor was truly volunteer work.

Petitioner stated he wants his probation terminated because he regards it as an "economic sanction" that has prevented him from getting insurance contracts. He said that he has been under this sanction since 2011, including the period when the practice restrictions were imposed while the accusation was pending.

Petitioner emphasized that he complied with the terms of his probation. However, on one occasion, petitioner appeared to resist the board's oversight. On August 16, 2017, when Kimberly Andrew, his probation monitor, sought to schedule his third quarter interview, Ms. Andrew described petitioner as "very combative and uncooperative." In response to her effort to schedule the interview, petitioner told her the board can "take his license," he was "tired of doing this," and he "didn't care anymore." When she told him she would process a document so that he could surrender his license he said he would be available on August 23, 2017, and on this date the interview proceeded. Petitioner testified that Ms. Andrew called High Desert and was "yelling and screaming," and her behavior was rude and unprofessional. At the same time, he acknowledged that he "probably" raised his voice and "both sides" contributed to the conflict. Petitioner did not deny he told Ms. Andrews he was "tired of doing this" and he "didn't care anymore."

Petitioner's testimony, regarding the dispute he had with his probation monitor appeared credible to the extent he believed "both sides" contributed to the heated exchange. But it is noted the attitude petitioner expressed towards his probation was consistent with evidence in the record that petitioner was frustrated he was on probation because he felt he had done nothing wrong and probation has served as an "economic sanction" against him.

Letters in Support of the Petition

6. As noted above, Drs. Penney and Fakhoury wrote letters in support of petitioner's application for early termination.

In his letter dated September 22, 2017, Dr. Penney stated that he has known petitioner for 35 years as a friend and colleague. He was aware of the charges against him and was in regular communication with petitioner. Dr. Penney wrote that he "frequently" discussed treatment options for patients with petitioner. Dr. Penney said that petitioner has been his, his wife's, and his sister's primary doctor. He described petitioner as very deliberate about the appropriate care of his patients and suitable workup and he provided "exceptional care" to his patients. Dr. Penney added that petitioner has, to his knowledge, complied with the terms of his probation and his mother, Effielou Arnette Penney, has served as a third party chaperone. Ms. Penney testified in this hearing that petitioner was sensitive to the privacy issues of female patients, and diligently protected their privacy.

In his letter dated September 28, 2017, Dr. Fakhoury stated that he is petitioner's brother and was aware of the allegations against him. Dr. Fakhoury has communicated with petitioner on a regular basis since he was placed on probation. He described petitioner as a diligent, professional and conscientious doctor. He said that the charges against him have been devastating to his business and reputation, petitioner has complied with the terms of his probation, and his brother asked that his license be reinstated.

In addition to these letters, petitioner submitted a letter dated November 27, 2018, from Gauttam Patel, M.D. Dr. Patel stated that he met petitioner in 2007 when petitioner joined his previous employment. Subsequently, Dr. Patel jointed the Veterans Administration as a doctor and co-managed some patients with petitioner. Dr. Patel said he would trust petitioner to treat members of his own family. Dr. Patel did not state in his letter that he was aware of the allegations against petitioner, but petitioner testified he discussed the allegations with Dr. Patel before he wrote his letter.

The Attorney General's Recommendation

7. The Attorney General opposed the petition. The Attorney General noted that petitioner failed to submit adequate evidence of rehabilitation to justify terminating probation. The Attorney General characterized petitioner's argument as merely boiling down to the fact that he has complied with the terms of probation. The Attorney General argued further that petitioner failed to comply with the jurisdictional requirements to have two licensed doctors who have personal knowledge of petitioner's activities support his petition, pursuant to Business and Professions Code section 2307, because Dr. Penney did not state in his letter he had personal knowledge of petitioner's activities since he was placed on probation. This last argument is rejected. Dr. Penney stated that he has been in regular communication with petitioner and to his knowledge petitioner has complied with the terms of his probation.

LEGAL CONCLUSIONS

Statutory Authority

1. Business and Professions Code section 2307 provides in part:
 - (a) A person . . . whose certificate has been revoked . . . or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.
 - (b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

[¶] . . . [¶]
 - (3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.
 - (c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.
 - (d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board . . . which shall be acted upon in accordance with Section 2335.
 - (e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

Regulatory Authority

2. California Code of Regulations, title 16, section 1359, provides:
 - (a) A petition for modification or termination of probation . . . shall be filed on a form provided by the division.
 - (b) Consideration shall be given to a petition for reinstatement of license or modification or termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.
3. California Code of Regulations, title 16, section 1360.2, provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

 - (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.
 - (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).
 - (d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).
 - (e) Evidence, if any, of rehabilitation submitted by the applicant.

The Burden and Standard of Proof

4. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored, and the burden is not on the board to prove to the contrary. The most clear and convincing proof of reform must be shown by a person seeking reinstatement in the medical profession. An individual seeking reinstatement must present strong proof of

rehabilitation, which must be sufficient to overcome the former adverse determination. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

Relevant Factors in Determining Rehabilitation

5. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) “While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . .” (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

“The evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct.” (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Because persons “under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an individual did not commit additional crimes or continue addictive behavior while in prison or while on probation or on parole.” (*In re Gossage* (2000) 23 Cal.4th 1080; 1099.)

Cause Does Not Exist to Terminate Probation

6. The determination whether petitioner’s probation should be terminated requires consideration of the evidence presented in this matter consistent with the factors under California Code of Regulations, title 16, section 1360.2. These factors include evaluating the nature and severity of the conduct that led to the discipline and petitioner’s evidence of rehabilitation.

After applying the evidence consistent with the factors under California Code of Regulations, title 16, section 1360.2, it is determined that petitioner failed to show by clear and convincing evidence that he is sufficiently rehabilitated such that early termination of probation is warranted. His petition is denied accordingly for the following reasons:

Petitioner’s conduct that resulted in discipline was serious. It raised fair concerns about his judgment, ability to safely treat female patients, and accurately record their care. As factors in favor of granting his petition, the conduct occurred over seven years ago in 2011, he has complied with the terms of his probation, he found the courses he was required to take helpful, and the doctors who wrote letters on his behalf described him as a competent physician. As factors against granting his petition, petitioner’s evidence of rehabilitation was minimal. Aside from the three letters he submitted, he did not submit letters from persons who described in detail his conduct and activities while he has been on probation. The volunteer work he cited as evidence of his rehabilitation was limited. His description of his volunteer work for CIF football was vague and it did not appear to be completely “volunteer

work” since he was paid for his services, albeit at a reduced rate. His work as a preceptor to nurse practitioners seemed related to continuing education credits he earned.

Additionally, during this hearing, respondent failed to take any responsibility for his misconduct which resulted in discipline of his certificate, and he attacked the credibility and motivations of his victims. In effect, petitioner wants his probation terminated because he believes the jury’s inability to reach a verdict means he was found innocent of the conduct detailed in the accusation. His assertion is not correct: First and foremost, petitioner agreed in the Stipulated Settlement and Disciplinary Order he signed on March 11, 2016, that if he ever petitions for early termination of probation the facts in the petition he will not contest the charges and allegations in the accusation; there is no reason to not hold him to this term of his agreement. Petitioner signed the Stipulated Settlement and Disciplinary Order after the criminal trial had ended. Thus, for purposes of this proceeding, the charges and allegations are deemed true and accurate. Also, the fact that a jury did not reach a verdict on the criminal charges against him does not lead to the conclusion that he did not engage in the conduct detailed in the accusation.

ORDER

Ramon Fawzi Fakhoury, M.D.’s petition for the early termination of his probation is denied.

DATED: December 24, 2018

DocuSigned by:

Abraham Levy

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ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings